

1 **Rollin A. Ransom (SBN 196126)**  
2 **rransom@sidley.com**  
3 **Cameron J. Johnson (SBN 266729)**  
4 **cameron.johnson@sidley.com**  
5 **SIDLEY AUSTIN LLP**  
6 **555 West Fifth Street, Suite 4000**  
7 **Los Angeles, California 90013**  
8 **Telephone: (213) 896-6000**  
9 **Facsimile: (213) 896-6600**

10 **Attorneys for Defendants Target Corporation,**  
11 **NC Apparel, Inc., Kandy Kiss of California,**  
12 **Inc., and Samsung C&T America, Inc.**

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

EKB TEXTILES, INC., a California  
Corporation

Plaintiff,

v.

TARGET CORPORATION, a  
Minnesota Corporation; NC APPAREL,  
INC., a California Corporation;  
KANDY KISS OF CALIFORNIA,  
INC., a California Corporation;  
SAMSUNG C&T AMERICA, INC., a  
New York Corporation; LF USA, INC.,  
a New York Corporation; and DOES 1-  
10,  
Defendants.

Case No.: CV 10-4443 RGK (JCx)  
Assigned to: Hon. R. Gary Klausner  
Magistrate: Hon. Jacqueline Chooljian

**DISCOVERY MATTER:**  
**STIPULATION FOR ENTRY OF**  
**PROTECTIVE ORDER FOR**  
**CONFIDENTIAL TREATMENT OF**  
**DOCUMENTS OR INFORMATION**

(Filed concurrently with [Proposed] Order Re:  
Stipulation For Entry Of Protective Order For  
Confidential Treatment Of Documents Or  
Information)

In connection with the production of confidential documents and other  
confidential information in this action, Plaintiff EKB TEXTILES, INC. and  
Defendants TARGET CORPORATION, NC APPAREL, INC., KANDY KISS OF

1 CALIFORNIA, INC., SAMSUNG C&T AMERICA, INC., and LF USA, INC.  
2 through their respective counsel, hereby enter into this Stipulated Protective Order for  
3 Confidential Treatment of Documents or Information (the "Stipulated Protective  
4 Order").

5 **I.**

6 **PURPOSE OF THIS PROTECTIVE ORDER /**  
7 **STATEMENT OF GOOD CAUSE**

8 The purpose of this Stipulated Protective Order is to provide a means for  
9 limiting access to and use and disclosure of Confidential Documents or Information  
10 that are produced in this action to the parties for use in this case unless otherwise  
11 ordered by the Court. The parties acknowledge that certain financial information,  
12 including mark-up, mark-down, and profit margin information may not be generally  
13 known to the public and may constitute sensitive business information that  
14 Defendant(s) may want to keep confidential.

15 Specifically, the apparel industry is a highly competitive industry and the  
16 information that is subject to this case, including profit margin information and other  
17 sensitive financial information, may cause competitive harm if disclosed publicly.  
18 The parties in this action have agreed to keep certain information confidential to  
19 avoid the possibility of irreparable competitive harm.

20  
21 **II.**

22 **DEFINITION OF "CONFIDENTIAL DOCUMENTS OR INFORMATION"**

23 "Confidential Documents or Information" are all Documents or Information that (a)  
24 have been produced by a party in this action; and (b) have been properly designated  
25 as "Confidential" or "Attorneys' Eyes Only" pursuant to paragraph III, below.  
26  
27  
28

1 **III.**

2 **DESIGNATION OF "CONFIDENTIAL DOCUMENTS OR INFORMATION"**

3 A party may designate such documents or information as "Confidential" or  
4 "Attorneys' Eyes Only" in accordance with the following procedures:

5 A. Criteria for Classification

6 1. **"Confidential" Documents or Information.** A party may  
7 designate documents or information as "Confidential" if the party reasonably believes  
8 the documents or information embody (a) sensitive, competitive or other confidential  
9 business information; (b) sensitive financial information; (c) sensitive product  
10 information; (d) sensitive personal information; (e) trade secrets; (f) other sensitive  
11 material that the party does not customarily disclose to the public; or (g) documents  
12 or information that the party currently maintains as confidential and is seeking to  
13 maintain as confidential for purposes of this action. The parties understand, however,  
14 that they may not designate as "Confidential" any material or information that is  
15 otherwise publicly available.

16 2. **"Attorneys' Eyes Only" Documents or Information.** A party  
17 may designate documents or information as "Attorneys' Eyes Only" if the party  
18 reasonably believes the documents or information embody (a) materials which are  
19 of an extremely high degree of current commercial sensitivity, and (b) would provide  
20 a competitive advantage to one or more of the parties to this case if disclosed.

21 B. Time of Designation

22 Unless otherwise agreed between counsel for the parties, the designation  
23 of Confidential Documents or Information shall be made at the time of the production  
24 of documents.

25 C. Manner of Designation

26 The designation of Confidential Documents or Information shall be  
27 made in the following manner:  
28

1           1. For documents, by placing the notation "Confidential" or  
2 "Attorneys' Eyes Only" on each page of such document;

3           2. For tangible items, including any documents or information  
4 produced on magnetic disks or other computer related media, by placing the notation  
5 "Confidential" or "Attorneys' Eyes Only" on the object and, if applicable, on the  
6 container thereof or if such are not practicable, as otherwise agreed by the parties. In  
7 the event a party receiving Confidential Documents and Information generates any  
8 hard copy or printout from any such documents or information, that party must  
9 immediately stamp each page "Confidential" or "Attorneys' Eyes Only," as  
10 appropriate, and the hard copy or printout shall be treated as Confidential Documents  
11 or Information pursuant to this Stipulated Protective Order.

12           D. Retroactive Designation

13           1. Inadvertent production of any Confidential Documents or  
14 Information without a designation of "Confidential" or "Attorneys' Eyes Only" will  
15 not be deemed to waive a later claim as to its confidential or privileged nature or  
16 prevent a party from re-designating said documents or information as "Confidential"  
17 or "Attorneys' Eyes Only" promptly after discovery of such inadvertent production.

18           2. Within a reasonable time after production, a producing party may  
19 retroactively designate documents or information as "Confidential" or "Attorneys'  
20 Eyes Only," or withdraw such a designation, provided that such retroactive  
21 designation or withdrawal shall be in accordance with the terms of this Stipulated  
22 Protective Order. Such retroactive designation or withdrawal shall be accomplished  
23 by notifying counsel in writing of such retroactive designation or withdrawal. Upon  
24 receipt of any such written re-designation, counsel shall (i) not make any further  
25 disclosure or communication of such retroactively designated material except as  
26 provided for in this order; (ii) take reasonable steps to notify all persons known to  
27 have possession of any retroactively designated material of the effect of such re-

1 designation under this order; and (iii) take reasonable steps to procure all copies of  
 2 such retroactively designated material from any persons known to have possession of  
 3 any such retroactively designated material who are not entitled to receipt under this  
 4 order.

5 E. Resolution of Disputes Regarding Designation

6 If a non-designating party, at any time, wishes to have the "Confidential" or  
 7 "Attorneys' Eyes Only" designation of any particular Confidential Documents or  
 8 Information removed or changed, that party shall first request the change in writing.  
 9 Thereafter, the parties shall make good faith efforts to resolve the dispute. If the  
 10 designating party refuses to agree to remove or change the designation, then the  
 11 objecting party may move, pursuant to Local Rule 37. At all times during the process  
 12 of challenging a designation, the parties shall treat the Confidential Documents or  
 13 Information as originally designated until a change is agreed to or the motion is  
 14 decided by the Court and written notice of such decision is served on the parties.

15  
 16 **IV.**  
 17 **PERSONS TO WHOM CONFIDENTIAL DOCUMENTS OR INFORMATION**  
 18 **MAY BE DISCLOSED**

19 A. Disclosure of Documents or Information Designated as "Confidential"

20 Documents or Information designated as "Confidential" may be  
 21 disclosed and copies may be provided only to:

22 1. The parties' counsel of record and such counsels' support staff,  
 23 legal assistants and clerical personnel;

24 2. Non-party expert witnesses or consultants retained by the parties  
 25 or their respective attorneys in connection with this action, and such expert's and/or  
 26 consultant's secretarial, technical and clerical employees who are actively assisting in  
 27 the preparation of this action, who have complied with paragraph IV(D), below;  
 28

1           3.     Outside court reporting services and court reporters as may be  
2 reasonably necessary in connection with the preparation or conduct of this action.

3           4.     The court and its personnel, or any other tribunal of competent  
4 jurisdiction having involvement in this matter and its personnel who are directly  
5 participating in this action;

6           5.     Any mediator or arbitrator selected by the parties to mediate or  
7 arbitrate this action; and

8           6.     Officers, directors and employees of the parties hereto who have a  
9 need to review material designated as "Confidential" to assist in connection with this  
10 litigation, who have complied with paragraph IV(D), below.

11         B.     Disclosure of Documents or Information Designated as "Attorneys' Eyes  
12 Only"

13                 Documents or Information designated as "Attorneys' Eyes Only " may  
14 be disclosed and copies may be provided only to:

15                 1.     The parties' counsel of record and such counsels' support staff,  
16 legal assistants and clerical personnel who are directly participating in this action;

17                 2.     Non-party expert witnesses or consultants retained by the parties  
18 or their respective attorneys in connection with this action, and such expert's and/or  
19 consultant's secretarial, technical and clerical employees who are actively assisting in  
20 the preparation of this action, who have complied with paragraph IV(D), below;

21                 3.     Outside court reporting services and court reporters as may be  
22 reasonably necessary in connection with the preparation or conduct of this action;

23                 4.     The court and its personnel, or any other tribunal of competent  
24 jurisdiction having involvement in this matter and its personnel who are directly  
25 participating in this action;

26                 5.     Any mediator or arbitrator selected by the parties to mediate or  
27 arbitrate this action; and  
28

6. In-house counsel who are not responsible for competitive decision-making and such in-house counsel's support staff, legal assistants and clerical personnel who are directly participating in this action, who have complied with paragraph IV(D), below. Notwithstanding anything to the contrary in this paragraph, this provision shall not permit in-house counsel at a company associated solely with the design alleged to be substantially similar to Plaintiff's Internal Design Number 3526 to view documents designated as "Attorneys' Eyes Only" that are related to the design alleged to be substantially similar to Plaintiff's Internal Design Number 4644, and vice-versa.

C. Additional Authorized Disclosure of Documents or Information Designated as "Confidential" or "Attorneys' Eyes Only"

Notwithstanding anything to the contrary in paragraphs IV(A) or IV(B) above, particular Confidential Documents or Information that have been designated as "Confidential" or "Attorneys' Eyes Only" may be disclosed and copies may be provided:

1. To persons who are explicitly named on the document as the authors or addressees or to persons who may, by prior testimony, be shown to be an author or recipient of any particular document;

2. To any other persons with the prior written consent of the designating party; and

3. To any other persons with the prior authorization of the Court.

If a document designated as "Confidential" or "Attorneys' Eyes Only" refers to the conduct or affairs of a potential witness, counsel may discuss such conduct or affairs with such person without revealing that such document exists, its authors or its source.

D. Disclosure to Experts, Consultants, or Parties





1 lawful process (provided the designating party is given a reasonable notice to object);  
2 or (3) as otherwise required by law. Notwithstanding the foregoing, nothing in this  
3 Stipulated Protective Order shall prevent or limit the designating party from  
4 disclosing or otherwise making use of Confidential Documents or Information it has  
5 designated.

6 B. Use of Confidential Documents or Information in The Conduct of this  
7 Action

8 1. Confidential Documents or Information may be used by counsel  
9 in good faith in connection with investigating this action, provided that the  
10 Confidential Documents or Information are protected pursuant to the terms and  
11 conditions of this Stipulated Protective Order.

12 2. Confidential Documents or Information may be used at a hearing  
13 so long as the designating party is given reasonable notice of the planned use and  
14 does not object. A designating party may request or the Court may order that a  
15 proceeding referring to or describing Confidential Documents or Information be  
16 conducted in camera, out of the presence of all unqualified persons, and that any  
17 transcript relating thereto be designated as "Confidential" and/or "Attorneys' Eyes  
18 Only" and that, at the time of preparation of the corresponding transcript of such  
19 testimony, the reporter place the notation "Confidential" and/or "Attorneys' Eyes  
20 Only" on each page of the transcript so designated, which transcript shall be  
21 separately bound and conspicuously marked on its cover.

22 3. If any non-designating party seeks to file pleadings or other  
23 documents with the Court that contain Confidential Documents or Information, such  
24 papers shall be accompanied by an application to file the papers, or the confidential  
25 portion thereof, under seal. Said application must demonstrate good cause for the  
26 filing under seal and shall be directed to the judge to whom the papers are directed.

1 Pending the ruling on the application, the papers or portion thereof subject to the  
2 sealing application shall be lodged under seal.

3 C. Use of Confidential Documents or Information in Connection with a  
4 Deposition

5 1. Those portions of depositions taken by any party at which any  
6 Confidential Documents or Information are used or inquired into may not be  
7 conducted in the presence of any person(s) not authorized to view or receive such  
8 Confidential Documents or Information under this Stipulated Protective Order.

9 2. Counsel for any deponent may designate testimony or exhibits as  
10 Confidential Documents or Information by indicating on the record at the deposition  
11 that the testimony of the deponent or any exhibits to his or her testimony are to be  
12 treated as Confidential Documents or Information. Counsel for any party may  
13 designate exhibits in which that party has a cognizable interest as Confidential  
14 Documents or Information by indicating on the record at the deposition that such  
15 exhibit(s) are to be treated as Confidential Documents or Information. Failure of  
16 counsel to designate testimony or exhibits as Confidential Documents or Information  
17 at deposition, however, shall not constitute a waiver of the protected status of the  
18 testimony or exhibits. Within thirty calendar days of receipt of the transcript of the  
19 deposition, or thirty days of the date on which the Stipulated Protective Order  
20 becomes effective, whichever occurs last, counsel shall be entitled to designate  
21 specific testimony or exhibits as Confidential Documents or Information. If counsel  
22 for the deponent or party fails to designate the transcript or exhibits as Confidential  
23 Documents or Information within the above-described thirty day period, any other  
24 party shall be entitled to treat the transcript or exhibits as non-confidential material..

25 3. When documents or information disclosed during a deposition are  
26 designated as "Confidential" and/or "Attorneys' Eyes Only" at the time testimony is  
27 given, the reporter shall separately transcribe those portions of the testimony so  
28

1 designated, shall place a notation of “Confidential” and/or “Attorneys’ Eyes Only,”  
2 as appropriate, on the face of the transcript, and shall maintain that portion of the  
3 transcript or exhibits in separate files marked to designate the confidentiality of their  
4 contents. The reporter shall not file or lodge with the Court any Confidential  
5 Documents or Information without obtaining written consent from the designating  
6 party. For convenience, if a deposition transcript or exhibit contains repeated  
7 references to Confidential Documents or Information which cannot conveniently be  
8 segregated from non-confidential material, any party may request that the entire  
9 transcript or exhibit be maintained by the reporter as Confidential Documents or  
10 Information.

## 11 VI.

### 12 RETURN OF CONFIDENTIAL DOCUMENTS, TESTIMONY, OR 13 INFORMATION

14 Within ninety (90) calendar days after the final settlement or termination of  
15 this action, the parties shall:

16 A. Return to the designating party or destroy (at the non-designating party’s  
17 option and expense) any and all Confidential Documents or Information and all  
18 copies thereof in the non-designating party’s possession, custody or control.

19 B. Ensure that all Confidential Documents or Information in the possession,  
20 custody or control of any permitted parties or third parties are returned to the  
21 designating party or destroyed;

22 C. Destroy all notes, memoranda or other documents that contain excerpts  
23 from any of the Confidential Documents or Information. Notwithstanding the  
24 foregoing, attorney work product, attorney-client communications, and information  
25 derived from Confidential Documents or Information may be retained by counsel.

26 D. In the case of an expert or consultant, return or destruction of any and all  
27 copies of Confidential Documents or Information disclosed to such expert or  
28

1 consultant shall occur upon the termination of their engagement or the final  
2 conclusion of this action, whichever occurs sooner.

3  
4 **VII.**

5 **PUBLIC DOCUMENTS**

6 None of the restrictions set forth in this Stipulated Protective Order shall apply  
7 to any documents or other information that become public knowledge by means not  
8 in violation of the provisions of this Stipulated Protective Order. Nothing in this  
9 Stipulated Protective Order shall prevent any non-designating party from using any  
10 information that it properly possessed prior to receipt of any Confidential Documents  
11 or Information or that is discovered independently by the party. The terms for the  
12 treatment of Confidential Documents or Information shall be effective only upon the  
13 entry of this Stipulated Protective Order.

14 **VIII.**

15 **SCOPE OF THIS ORDER**

16 A. Except for the provisions regarding post-trial or post-settlement return  
17 and destruction of Confidential Documents or Information, or segregation of work  
18 product which embodies such material, this order is strictly a pretrial order; it does  
19 not govern the trial in this action.

20 B. Not later than seven days before trial in the action, Counsel agree to  
21 meet and confer concerning the use at trial of Confidential Documents or  
22 Information.

23 C. Nothing in this Protective Order shall be deemed to limit, prejudice, or  
24 waive any right of any party or person (a) to resist or compel discovery with respect  
25 to, or to seek to obtain additional or different protection for, documents or  
26 information claimed to be protected work product or privileged under California or  
27 federal law, documents or information as to which the producing party claims a legal  
28

1 obligation not to disclose, or documents or information not required to be provided  
2 pursuant to California law; (b) to seek to modify or obtain relief from any aspect of  
3 this Stipulated Protective Order; (c) to object to the use, relevance, or admissibility at  
4 trial or otherwise of any documents or information, whether or not designated in  
5 whole or in part as Confidential Documents or Information governed by this  
6 Stipulated Protective Order; or (d) otherwise to require that discovery be conducted  
7 according to governing laws and rules.

8 D. Designation of documents or information as "Confidential" and/or  
9 "Attorneys' Eyes Only" on the face of such material shall have no effect on the  
10 authenticity or admissibility of such material at trial.

11 E. This Stipulated Protective Order shall not aggregate or diminish any  
12 contractual, statutory or other legal obligation or right of any party or person with  
13 respect to any Confidential Documents or Information designated by that party.

14 F. The fact that information is designated "Confidential" or "Attorneys'  
15 Eyes Only" under the Stipulated Protective Order shall not be deemed to be  
16 determinative of what a trier of fact may determine to be confidential or proprietary.  
17 This Stipulated Protective Order shall be without prejudice to the right of any party to  
18 bring before the Court (a) whether any particular material is or is not confidential or  
19 (b) whether any particular information or material is or is not entitled to a greater or  
20 lesser degree of protection under the terms of this Stipulated Protective Order,  
21 provided that in doing so, the party complies with the procedures set forth herein.  
22 The fact that any information is disclosed, used, or produced in any proceeding in this  
23 action shall not be offered in any action or proceeding before any court, agency or  
24 tribunal as evidence of or concerning whether or not such information is admissible,  
25 confidential or proprietary.

26 G. If at any time any Confidential Documents or Information are  
27 subpoenaed from a non-designating party by any court, administrative or legislative  
28

body, or is requested by any other person or entity purporting to have authority to require the production of such material, the party to whom the subpoena or other request is directed shall immediately give written notice thereof to the designating party with respect to Confidential Documents or Information sought and shall afford the designating party reasonable opportunity to pursue formal objections to such disclosures. If the designating party does not prevail on its objections to such disclosure, the non-designating party may produce the Confidential Documents or Information without violating this Stipulated Protective Order.

**IX.**

**NO IMPLIED WAIVER OF ADMISSION**

No party shall be obligated to challenge the proprietary nature of any designation of “Confidential” or “Attorneys’ Eyes Only” information, and the failure to do so shall not constitute a waiver or otherwise preclude a subsequent challenge to the deposition.

**X.**

**MODIFICATION OF THIS STIPULATED PROTECTIVE ORDER**

Any party hereto may seek an order of the Court to modify the terms of this Stipulated Protective Order. Any application or motion seeking such modification must be served upon all counsel of record and filed in accordance with the California Code of Civil Procedure. Any party may seek an order of the Court for further protection of the confidentiality of information or documents.

**XI.**

**PRIOR ORDERS**

This Stipulated Protective Order shall not affect any prior order of the Court.

**XII.**

**EXECUTION AND COUNTERPART**

This Stipulated Protective Order may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile signatures or any party upon the signature page of this Stipulated Protective Order shall be binding upon the parties hereto and may be submitted as though such signatures were original signatures.

SO STIPULATED.

DATED: December 15, 2010

DONIGER / BURROUGHS, APC

By: /s/ Stephen M. Doniger

STEPHEN M. DONIGER  
Attorneys for Plaintiff  
EKB Textiles, Inc.

DATED: December 15, 2010

SIDLEY AUSTIN LLP

By: /s/ Cameron J. Johnson

CAMERON J. JOHNSON  
Attorneys for Defendants  
Target Corporation,  
NC Apparel, Inc., Kandy Kiss of  
California, Inc., and Samsung C&T  
America, Inc.

DATED: December 15, 2010

HOLME ROBERTS & OWEN, LLP

By: /s/ Sharon Z. Weiss

SHARON Z. WEISS  
Attorneys for Defendant  
LF USA, Inc.

**EXHIBIT A****Acknowledgment and Agreement To Be Bound**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under  
 penalty of perjury that I have read in its entirety and understand the Protective Order  
 that was issued by the United States District Court for the Central District of  
 California in the case of *EKB Textiles Inc. v. Target Corporation*, Case No. CV 10-  
 4443 RGK (JCx). I agree to comply with and to be bound by all the terms of this  
 Protective Order and I understand and acknowledge that failure to so comply could  
 expose me to sanctions and punishment in the nature of contempt. I solemnly  
 promise that I will not disclose in any manner any information or item that is subject  
 to this Protective Order to any person or entity except in strict compliance with the  
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
 for the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Signed: \_\_\_\_\_

[Print Name]

[Signature]